

Appl. No. 09/978,261  
Amendment Accompanying Request for Continued Examination  
Response to Advisory Action dated May 10, 2005

### REMARKS

Applicants respectfully request consideration and entry of the previously submitted April 27, 2005 Amendment in Response to the March 3, 2005 Office Action.

Page 2 of the May 10, 2005 Advisory Action stated that the phrase "wherein detection of an increase in the signal indicates the presence of the target nucleic acid in the sample" in step (d) of amended claims 40 and 47 raises issues of new matter because page 63, lines 13 - 15 of the specification does not support this limitation. Applicants respectfully disagree.

"By disclosing in a patent application a device that inherently performs a function or has a property, operates according to a theory or has an advantage, a patent application necessarily discloses that function, theory or advantage, even though it says nothing explicit concerning it." MPEP 2163.7(a). In addition to page 63, lines 13 - 15, Applicants draw the Examiner's attention to page 63, lines 11 - 13 and Figure 20 for support for the amendments to claims 40 and 47. The specification states that when the primers are bound to one another the signal is inhibited. However, following primer extension, the primers are separated thereby permitting the detection of a signal. Applicants maintain that it would be so recognized by one of ordinary skill in the art that one would be measuring an increase in the signal when going from a state of signal inhibition (i.e., primers bound to one another) to a state of signal detection (i.e., following primer extension). Accordingly, the amendment does not raise an issue of new matter.

### CONCLUSION

Applicants respectfully submit that this application is in condition for allowance. Early and favorable action is earnestly solicited. No fee, except for the fee in connection with the Request for Continued Examination and the one month extension fee, is believed due in

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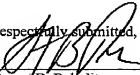
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connection with the filing of this Response. However, if any additional fees are due the amount of such fee may be charged to Deposit Account No. 19-4709.

Respectfully submitted,



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